

Settlements to be Patterned After Board Orders	10146.5
Partial Settlements in a Single Case	10146.6
Default Language in Settlement Agreements	10146.7
Bilateral Informal Settlement Agreements	10148
Conformance of Settlement Agreement and Charge	10148.1
Action on Approval of Settlement Agreement	10148.2
Responsibility for Compliance	10148.3
Closing of Case	10148.4
Unilateral Informal Settlement Agreements	10150
Notification to Charging Party	10150.1
Dismissal of Charge	10150.2
Timing for Compliance	10150.3
Noncompliance with Settlement Agreements	10152
Settlement Agreements Without Default Language	10152.1
Settlement Agreements with Default Language	10152.2
Postcomplaint Settlement Agreements and Non-Board Adjustments	10154
Settlement Agreement Executed Prior to Opening of Hearing	10154.1
Role of Settlement Judge	10154.2
Role of Trial Judge in Settlement Efforts	10154.3
Approval of Settlement Agreement After Hearing Opens	10154.4
Approval of Withdrawal of the Charge After Hearing Opens	10154.5
Appeal from Administrative Law Judge’s Approval of a Settlement Agreement or Withdrawal of the Charge	10154.6
Approval of a Withdrawal of the Charge or a Settlement Agreement After Administrative Law Judge Decision	10154.7
FORMAL SETTLEMENT STIPULATIONS	10164–10170
Nature of Formal Settlement Stipulations	10164
Generally	10164.1
Parties	10164.2
Overview	10164.3
Basic Record	10164.4
Court Judgment Preferred	10164.5
Backpay Provisions	10164.6
Obtaining Approval of Formal Settlement Stipulation	10164.7
Transmittal Memorandum	10164.8
Nonapproval by Board	10164.9
Content of a Formal Settlement Stipulation	10166
Disposition of Allegations	10166.1
Facts	1166.2
Overall Content of Formal Settlement Stipulation	10166.3
Other Case Specific Issues	10166.4
Proposed Order Provisions	10166.5
Proposed Notice and Related Order Provisions	10166.6
Consent to Board Order	10166.7
Consent to Court Judgment	10166.8
Pattern 60, Formal Settlement Stipulation in CA Case	10168
Pattern for Settlement Stipulation in CB, CC, CD, and CE Cases	10170
SECTIONS 10(I) AND 10(k)—CC, CD, CE, AND CP CASES	10200–10248
Statutory Priority	10200
Timeliness Guidelines	10200.1
Requests for Advice and Notification to Headquarters	10200.2

DETAILED TABLE OF CONTENTS

CC CASES **10202–10204**

Conduct Proscribed by Section 8(b)(4)..... **10202**

Settlement Notices in CC Cases..... **10204**

CD CASES AND SECTION 10(k)..... **10206–10220**

Conduct Proscribed by Section 8(b)(4)(D) **10206**

Notice of Charge Filed in CD Cases **10208**

Pattern for Notice of Charge Filed in CD Cases **10210**

Disclaimer in CD Cases **10212**

The 10(k) Hearing..... **10214**

 Notice of Hearing and Service..... 10214.1

 Scheduling 10214.2

 National Defense Cases..... 10214.3

 Hearing Officers 10214.4

 Expedited Transcript..... 10214.5

 Hearing Officer’s Report..... 10214.6

 Outline for Hearing Officer’s Report..... 10214.7

 Posthearing Motion..... 10214.8

Agreed-Upon Method of Voluntary Adjustment and Actual Adjustment in 10(k) Cases..... **10216**

 Agreed-Upon Method of Adjustment..... 10216.1

 Actual Adjustment..... 10216.2

 Unsolicited Withdrawal Request..... 10216.3

Disposition of Charge After Jurisdictional Determination or Award..... **10218**

 Work Awarded to the Charged Party 10218.1

 Work Not Awarded to the Charged Party..... 10218.2

Settlements in CD Cases..... **10220**

 Notices 10220.1

CE CASES **10222–10224**

Conduct Proscribed by Section 8(e) **10222**

Settlements in 8(e) Cases..... **10224**

 Notices 10224.1

 Nonparticipation of Necessary Parties 10224.2

CP CASES **10230–10236**

Conduct Proscribed by Section 8(b)(7)..... **10230**

Representation Petitions and 8(b)(7) Charges..... **10232**

 Representation Petitions and 8(b)(7)(A) and (B) Charges..... 10232.1

 Expedited Election Procedures under Section 8(b)(7)(C)..... 10232.2

Concurrent 8(b)(7) and 8(a)(2) Charges; Effect on 10(I) Proceedings..... **10234**

 Meritorious 8(a)(2) Charges and 8(b)(7)(A) Cases..... 10234.1

 Meritorious 8(a)(2) Charges and 8(b)(7)(C) Cases..... 10234.2

 Nonmeritorious 8(a)(2) Charges..... 10234.3

Patterns for Documents Related to 8(b)(7) Cases..... **10236**

 Pattern 70, Notice of Expedited Representation Hearing, Section 8(b)(7)(C) 10236.1

 Pattern 71, Order Consolidating Cases and Notice of Expedited Representation Hearing..... 10236.2

 Pattern 72, Regional Director’s Direction of Expedited Election 10236.3

 Pattern 73, Dismissal of 8(b)(7)(C) Charge (When Regional Office Has Directed Expedited Election)..... 10236.4

 Pattern 74, Dismissal of Petition—Meritorious 8(b)(7)(A) or (B) Charge..... 10236.5

 Pattern 75, Refusal to Process Under Expedited Procedure..... 10236.6

INJUNCTIVE RELIEF UNDER SECTION 10(l)	10238–10248
Section 10(l)	10238
Injunctive Relief in CD Cases	10240
Initiating 10(l) Proceedings	10242
Temporary Restraining Orders in 10(l) Proceedings	10244
Post 10(l) Informal Settlements	10245
Appeals and Contempt of District Court Orders in 10(l) Proceedings	10246
Processing of Underlying Unfair Labor Practices in 10(l) Cases	10248
 FORMAL PROCEEDINGS	 10250–10452
Further Investigation	10250
Settlement Attempts	10252
Cases Involving Monetary Remedy	10254
Administrative Considerations	10256
Procurement of Hearing Date	10256.1
Estimated Length of Hearing	10256.2
Hearing Date for Summary Judgment Cases	10256.3
Hearing Space	10256.4
 THE COMPLAINT	 10260–10280
Generally	10260
Complaint Drafter’s Responsibility	10262
Content of Complaint	10264
Conformity of Charges and Complaints	10264.1
Particularity of Complaint	10264.2
Correct Respondent(s)	10264.3
Additional Parties	10264.4
Special Remedies and Circumstances Pled in Complaint	10266
Special Remedies	10266.1
Strike Situations	10266.2
Unlawful Fees, Dues, or Assessments	10266.3
Form and Service of Complaint	10268
Form of Complaint	10268.1
Notice of Hearing and Answer Requirement	10268.2
Attachments and Related Instructions	10268.3
Service of Complaint	10268.4
Postcomplaint Action	10270
Amendments to Complaint	10274
Prehearing	10274.1
At Hearing	10274.2
After Hearing	10274.3
Parties Derivatively Liable for Remedy	10274.4
Service	10274.5
Withdrawal/Dismissal of Complaint	10275
Prior to Hearing	10275.1
At Hearing, Prior to Introduction of Evidence	10275.2
At Hearing, After Introduction of Evidence, Prior to Transfer to the Board	10275.3
After Transfer to the Board	10275.4
Complaint Issued on Headquarters’ Authorization	10275.5
Postcomplaint Attempts to Withdraw Charge; Dismissal of Complaint	10276
Answer	10280

DETAILED TABLE OF CONTENTS

Allegations Not Denied Deemed Admitted 10280.1
Motion to Strike Improper Answer 10280.2
No Answer Filed; Motion for Default Judgment 10280.3
Answer to Amended Complaint..... 10280.4
Motion for Summary Judgment in 8(a)(5) Cases 10282
 Generally 10282.1
 Regional Procedure..... 10282.2
Other Motions for Summary Judgment 10283

SUBMISSION OF STIPULATED RECORD TO ADMINISTRATIVE LAW
JUDGE OR THE BOARD 10284–10288
Stipulated Records 10284
Submission to Administrative Law Judge 10286
Submission to the Board 10288

PRETRIAL MOTIONS AND PREHEARING POSTPONEMENTS 10290–10294
Motions 10290
 Oppositions..... 10290.1
 Ruled on by Regional Director 10290.2
 Ruled on by Administrative Law Judge 10290.3
 Appeal from Ruling 10290.4
 Motions and Rulings Thereon Part of Record..... 10290.5
Types of Pretrial Motions 10292
 Bill of Particulars Addressed to Complaint 10292.1
 Bill of Particulars Addressed to Answer 10292.2
 Answer Defective in Content..... 10292.3
 Pretrial Discovery Devices 10292.4
Prehearing Postponements 10294
 General Policy 10294.1
 Request 10294.2
 Ruling on Request..... 10294.3
 Followup Action 10294.4
 Request and Ruling Included in Record..... 10294.5
 Postponement of Hearings in Emergency Situations..... 10294.6

INJUNCTIVE RELIEF UNDER SECTIONS 10(j) AND 10(e) 10310–10320
Consideration of 10(j) Injunctive Relief 10310
 Notification to Parties 10310.1
 Guidelines for the Utilization of Section 10(j)..... 10310.2
 Submission to the Injunction Litigation Branch 10310.3
 Settlement Efforts and Issuance of Complaint Pending 10(j) Determination 10310.4
 Preparation of Court Papers and Expeditious Filing 10310.5
 Court Action; Expeditious Processing..... 10310.6
 Post 10(j) Informal Settlements 10310.7
Appeals and Contempt of 10(j) District Court Orders 10312
Effect of Board’s Decision and Order on Section 10(j) Proceeding 10314
Injunctive Relief Under Section 10(e)..... 10320

TRIAL PREPARATION 10330–10352
General Preparation 10330
Analysis of Pleadings 10332
Pretrial Preparation and Investigation 10334
 Examination of Documents 10334.1

Interview of Witnesses	10334.2
Affidavits from Additional Witnesses.....	10334.3
Instructions to Witnesses.....	10334.4
Charged Party’s Ability to Comply with Remedy	10334.5
Trial Brief	10336
Preparation of Exhibits.....	10338
Service of Subpoenas	10340
Prehearing Conferences with Parties	10350
Settlement Judge	10351
Depositions in Lieu of Trial Testimony	10352
Depositions; General.....	10352.1
“Good Cause”.....	10352.2
Application for Deposition.....	10352.3
Order and Notice of Deposition.....	10352.4
Taking of Deposition.....	10352.5
Reporter and Transcript of Testimony	10352.6
Introduction into Evidence	10352.7
THE HEARING	10380–10409
Role and Conduct of Trial Attorney.....	10380
Conduct Toward the Administrative Law Judge.....	10380.1
Conduct Toward the Parties.....	10380.2
Responsibility for Prosecution of the Case.....	10380.3
Record	10380.4
Pretrial Conferences at Hearing with Administrative Law Judge.....	10381
Opening of Hearing	10382
Formal Papers	10384
Opening Statements.....	10386
Trial Motions	10388
Motion to Intervene.....	10388.1
Motion to Dismiss.....	10388.2
Failure of Proof.....	10388.3
Other Common Motions.....	10388.4
Rules of Evidence	10390
Stipulations	10392
Witnesses	10394
Sequestration of Witnesses.....	10394.1
Examination of Witnesses.....	10394.2
Rule 611(c) Federal Rules of Evidence.....	10394.3
Cross-Examination of Witnesses	10394.4
Objections	10394.5
Use of Statements or Affidavits.....	10394.6
Production of Witness Statements	10394.7
Opposition to Production of All or Certain Portions of Statement; In Camera Inspections....	10394.8
Copies of Statements for Counsel.....	10394.9
Statements Produced and Entered in Record.....	10394.10
Offers of Proof	10396
Exhibits	10398
Identification.....	10398.1
Introduction.....	10398.2
Rejected	10398.3
Record of Exhibits	10398.4

DETAILED TABLE OF CONTENTS

Submitted After Close of Hearing..... 10398.5
Custody of Exhibits..... 10398.6
Requests to Produce by Opposing Counsel 10400
Evidence of Settlement Negotiations 10402
Background Evidence and Use of Presettlement Conduct 10403
Appeals to Board 10404
Postponements 10406
 Requested Because of Lack of or Newly Acquired Counsel 10406.1
 Requested Because of Amendment to Complaint..... 10406.2
 Requested to Prepare Defense 10406.3
 Necessitated by Other Matters 10406.4
Remedy Sought 10407
 Statement on Record 10407.1
 New Developments Requiring Reconsideration 10407.2
 Proposed Remedy Not a Limitation 10407.3
 Charging Party Seeks Different Remedy..... 10407.4
 Possible Change in Circumstances After Hearing..... 10407.5
 Respondent’s Reaction to Proposed Remedy 10407.6
Bench Decisions and Oral Argument 10408
Close of Hearing 10409

POSTHEARING 10410–10444
Briefs to Administrative Law Judge..... 10410
Correcting the Transcript..... 10412
Administrative Law Judge’s Decision 10430
 Analysis of Significant Losses in Administrative Law Judge’s Decision..... 10430.1
 Novel or Complex Policy Questions Arising in Administrative Law Judge Decision 10430.2
Compliance with Administrative Law Judge’s Decision..... 10434
Request for Review of Order Granting Dismissal..... 10436
**Exceptions; Cross-Exceptions; Brief Supporting the Administrative Law Judge’s
Decision and Request for Oral Argument 10438**
 Filing of Exceptions; Cross-Exceptions 10438.1
 Time for Filing Exceptions and Cross-Exceptions..... 10438.2
 Responsibility for Determination and Preparation of Exceptions; Cross-Exceptions 10438.3
 Preparation of Exceptions; Cross-Exceptions..... 10438.4
 Answering Briefs; Reply Briefs..... 10438.5
 Request for Oral Argument — Division of Advice Notification 10438.6
 Brief in Support of Administrative Law Judge’s Decision 10438.7
Oral Argument Before Board..... 10442
Posthearing Motions 10444

BOARD ORDER 10450–10452
Issuance 10450
Motions for Reconsideration Under Sec. 102.48 10452

COMMON TO ALL CASES 11700–11886

JURISDICTION 11700–11711
Jurisdictional Standards..... 11700

Investigation	11702
Obtaining Commerce Information from Employer	11702.1
Examination of Employer Records	11702.2
Commerce Affidavit	11702.3
Action on Basis of Commerce Investigation	11702.4
Subpoenas for Commerce Information	11704
Representation Cases	11704.1
Unfair Labor Practice Cases	11704.2
Failure to Comply with Subpoena	11704.3
Other Sources for Obtaining Commerce Information	11705
Contacts with Other Agencies	11705.1
Jurisdictional Standards Not Met	11706
Jurisdictional Policy Question	11707
Proof in Formal Proceedings	11708
Advisory Opinions	11709
Regional Office Action	11709.1
Declaratory Orders	11710
National Mediation Board Jurisdiction	11711
Jurisdiction Clear	11711.1
Arguable RLA Jurisdiction	11711.2
TRANSFER, CONSOLIDATION AND SEVERANCE	11712–11720
Generally	11712
Interregional Transfers	11714
Individual Case(s) Transfer	11714.1
Interregional Assistance Program	11714.2
Consolidation	11716
Severance	11718
Motions to Consolidate or Sever	11720
Unfair Labor Practice Cases	11720.1
Representation Cases	11720.2
CONCURRENT R (REPRESENTATION) AND C (ULP) CASES	11730–11734
BLOCKING UNFAIR LABOR PRACTICE CHARGES; EXCEPTIONS	11730–11731
Blocking Charge Policy—Generally	11730
Types of Blocking Charges	11730.1
Type I Charges: Charges That Allege Conduct That Only Interferes With Employee Free Choice (Request to Proceed May be Honored)	11730.2
Type II Charges: Charges that Affect the Petition or Showing of Interest, that Condition or Preclude a Question Concerning Representation, or that Taint an Incumbent Union’s Subsequent Loss of Majority Support (Request to Proceed May Not be Honored)	11730.3
Charges that Affect the Petition or Showing of Interest	11730.3(a)
Charges that Condition or Preclude a Question Concerning Representation	11730.3(b)
Charges that Taint an Incumbent Union’s Subsequent Loss of Majority Support	11730.3(c)
Decision Whether to Hold Petition in Abeyance	11730.4
AC and UC Cases	11730.5
Period of Pendency of Charge	11730.6
Informing Parties	11730.7
Notification to Board	11730.8

DETAILED TABLE OF CONTENTS

Exceptions to Blocking Charge Policy **11731**
Exception 1: Request to Proceed 11731.1
 Receipt of Request to Proceed (Type I Charge) 11731.1(a)
 Rescission of Request to Proceed 11731.1(b)
 Where Type II Charges are Involved 11731.1(c)
 Section 8(a)(2) Carlson Waiver 11731.1(c)(1)
 Withdrawal and Attempted Reinstatement of Charge 11731.1(c)(2)
Exception 2: Free Choice Possible Notwithstanding Charge 11731.2
Exception 3: Petition and Charge Raise Significant Common Issues; UC and AC Petitions 11731.3
Exception 4: Scheduled Hearing 11731.4
Exception 5: Scheduled Election 11731.5

FINDING AS TO MERIT OF UNFAIR LABOR PRACTICE CHARGE **11732–11733**
Charge Found Not to Have Merit **11732**
Charge Found to Have Merit **11733**
 Blocking of Petition Warranted 11733.1
 Dismissal of Petition Warranted 11733.2
 Types of Violations Found 11733.2(a)
 Violations that Affect the Petition or Showing of Interest 11733.2(a)(1)
 Violations That Condition or Preclude a Question Concerning Representation 11733.2(a)(2)
 Violations That Taint an Incumbent Union’s Subsequent Loss of Majority Support 11733.2(a)(3)
 Dismissal Letter 11733.2(b)

RESUMPTION OF PROCESSING OF PETITION **11734**
Resumption of Processing of Petition Upon Disposition of Charge **11734**

PRIORITY OF CASE PROCESSING **11740**
Priority of Cases—Impact Analysis **11740**
 Category III Cases: Exceptional Impact 11740.1
 Category II Cases: Significant Impact 11740.2
 Category I Cases: Important Impact 11740.3
 Priority of Cases Within Each Category 11740.4

**SUBMISSIONS TO DIVISIONS OF ADVICE AND OPERATIONS-MANAGEMENT,
THE SPECIAL LITIGATION BRANCH AND THE OFFICE OF THE
EXECUTIVE SECRETARY** **11750–11754**
Unfair labor Practice Cases **11750**
 Submissions to Division of Advice 11750.1
 Format and Content of Request for Advice 11750.2
 Requests by Division of Advice for Further Investigation 11750.3
Suits Against the Agency and Requests for Intervention **11751**
Precomplaint Submissions to Division of Operations-Management **11752**
Postcomplaint, Posthearing, and Compliance Submissions **11753**
 Postcomplaint Submissions 11753.1
 Posthearing Submissions 11753.2
 Compliance 11753.3
 Equal Access to Justice Act (EAJA) 11753.4
Representation Cases **11754**
 Generally 11754.1
 Authorization From Headquarters 11754.2

SUBPOENAS **11770–11784**
Investigative Subpoenas **11770**

DETAILED TABLE OF CONTENTS

Application for Investigative Subpoena	11770.1
Scope of Regional Director’s Discretion	11770.2
Notification of Counsel or Representative	11770.3
Clearance by Headquarters	11770.4
Financial Institution Records	11770.5
Problems Regarding Enforceability; Reports to Headquarters	11770.6
Trial or Hearing Subpoenas	11772
Persons Subpoenaed	11774
Subpoenas Duces Tecum	11776
Service	11778
Witness Fees	11780
Petition to Revoke	11782
Filed Prior to Hearing	11782.1
Filed at Hearing	11782.2
Notice of Filing	11782.3
Five-Day Period	11782.4
Not a Part of the Record	11782.5
Witness Claims of Privilege Against Self-Incrimination	11784
ENFORCEMENT OF SUBPOENA	11790–11808
Enforcement of Subpoena	11790
Issued at Request of Private Parties	11790.1
Issued at Request of the General Counsel	11790.2
Notification to Headquarters	11790.3
Appeal Proceedings	11790.4
Stays Pending Appeal	11790.5
Subpoena Authority of the Board/Court Jurisdiction	11792
Authority of Board to Issue Subpoenas	11792.1
Jurisdiction of Courts to Enforce Subpoenas	11792.2
Collateral Proceedings	11792.3
Relevance	11794
“Fishing Expedition” as a Defense	11796
Subpoena Enforcement Procedures	11798
Order to Show Cause Procedure	11798.1
Motion Procedure	11798.2
Subpoena Enforcement Documents	11800
Patterns Provided	11800.1
Procedural Issues	11800.2
Pattern 51, Application for Order Enforcing Subpoena ad Testificandum	11802
Pattern 51	11802.1
Pattern 52, Application for Order Enforcing Subpoena Duces Tecum	11804
Pattern 52	11804.1
Pattern 53, Order to Show Cause	11806
Pattern 53	11806.1
Pattern 54, Notice of Institution of Proceeding to Enforce Subpoena ad Testificandum	11808
Pattern 54	11808.1
DISCLOSURE OF AGENCY DOCUMENTS AND SUBPOENAS OF, AND TESTIMONY BY, AGENCY PERSONNEL	11820–11828
Policy on Disclosure of Documents and Board Agent Testimony	11820
FOIA Disclosure of Documents	11822

DETAILED TABLE OF CONTENTS

Subpoena of Agency Documents and Personnel..... **11824**
Delegation of General Counsel Authority 11824.1
Steps to be Taken on Receiving Subpoena 11824.2
Witness Fees and Allowances..... 11824.3

Agency Motion to Quash or Petition to Revoke **11826**
Motion to Quash/Petition to Revoke—Non-Board Proceedings..... 11826.1
Petition to Revoke—Board Proceedings 11826.2
Petition to Revoke Denied—Board Proceedings 11826.3
Instructions to Testify or Produce Records Without Permission in Non-Board Proceedings . 11826.4

Production of Documents in Formal Proceedings..... **11828**

SERVICE, FILING, AND COMMUNICATIONS WITH PARTIES..... **11840–11846**

Service and Filing of Documents **11840**
Computation of Period of Time 11840.1
Date of Service and Proof..... 11840.2
Receipt of Documents and Postmark Rule 11840.3
Receipt of Documents—Exceptions to Postmark Rule 11840.4

Service by the Regional Offices **11842**
Service of Charge by the Regional Office 11842.1
Service of Other Formal Documents..... 11842.2
Service on Attorney or Other Representative 11842.3

Communications with Parties..... **11844**
Correspondence with Parties in Representation Cases 11844.1
Correspondence in Compliance Proceedings..... 11844.2
Correspondence by E-mail 11844.3

Filing and Service by Parties..... **11846**
Facsimile Filing Permitted..... 11846.1
Facsimile Filing Permitted only with Consent..... 11846.2
Facsimile Filing Prohibited 11846.3
Electronic Filing and Service..... 11846.4
Service by Party on Other Parties 11846.5

CASE FILES AND DOCUMENTARY EVIDENCE **11850–11860**

Case Files **11850**
Organization of Files..... 11850.1
File Should Contain Complete History of Case..... 11850.2

Documentary Evidence..... **11860**

REPORTING SERVICE..... **11870**

Official Reporting Service **11870**
Notification of Hearing Schedule..... 11870.1
Coordination with the Local Reporter 11870.2
Scheduling Hearings 11870.3
Timely Notification of Cancellations or Postponements 11870.4
Report of Obligated Cost of Hearing, Form NLRB-4237 11870.5
Sales of Copies of Transcript..... 11870.6
Reporting Service Compliance with Contract..... 11870.7
Other Contract Provisions 11870.8

COMMUNICATIONS AND TRAVEL..... **11880–11886**

Communication with Headquarters..... **11880**

Communication with the Board **11881**

Travel Beyond Regional Boundaries..... **11882**

Communication With Other Agencies	11884
Congressional Inquiries	11886
Reply by Regional Directors	11886.1
Reply by the Division of Operations-Management.....	11886.2
REGIONAL AND SUBREGIONAL OFFICES	15004
Alphabetical List	15004
Areas Served By Regional and Subregional Offices	15010

INDEX

TABLE OF CASES